

**Briefing for Jared Blumenfeld**  
**CA Bay Delta Water Quality Standards Notice of Intent**  
**January 12, 2016**

**Purpose:**

Explore potential options for responding to an anticipated complaint alleging failure to act on mandatory duty to review water quality standards changes

**Background:**

- **December 13, 2006:** California Water Board updated the 2006 Water Quality Control Plan (WQCP), retaining water quality standards (WQS) that set outflow requirements for water flows through the Bay Delta originally established by CA and approved by EPA in 1995. Many of these standards are not implemented through NPDES permits but rather water supply diversion permits. EPA doesn't have a formal oversight role in these water rights permits as with NPDES permits that we can object to and revise.
- **August 2012:** EPA released an action plan for Water Quality Challenges in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, concluding that Clean Water Act programs are not adequately protecting aquatic resources of the Bay Delta Estuary. The Action Plan's highest priority is updating WQS to provide habitat conditions that protect aquatic life. The Plan cited the State's goal of completing these updated standards by June, 2014.
- **January 17, 2014:** California Governor Jerry Brown issued a Drought Emergency Proclamation suspending section 13247 of the California Water Code which requires "state offices, departments, and boards" to "comply with water quality control plans approved or adopted by the state board unless otherwise directed or authorized by statute." The suspension has been extended through May 31, 2016.
- **January 2014-December 2015:** California's State Water Resources Control Board approved Temporary Urgency Change Petition (TUCP) orders filed by the Bureau of Reclamation (BOR) and Department of Water Resources (DWR) to temporarily modify Delta flow and water quality requirements to address critically dry conditions associated with California's ongoing drought.
- **October 29, 2015:** Natural Resources Defense Council, Defenders of Wildlife, and The Bay Institute sent EPA a 60-day notice of intent to sue letter. This is a mandatory duty case with two allegations:
  - (1) EPA failed to act on WQS suspensions (TUCPs) in CA state regulations for the San Francisco Bay Delta area as changes to water quality standards.
  - (2) EPA failed to conduct a triennial review of state WQS in the Bay Delta in absence of state action to conduct such a review: "violation of CWA Section 303(c)(1) for failure to review the Bay-Delta WQS at least every three years"
- **December 15, 2015:** California's State Water Resources Control Board approved a petition for reconsideration of the February 3, 2015 TUCP Order that requires Reclamation and DWR to work

with federal and state fisheries agencies to plan for water management in drought conditions through 2016. EPA is not identified as a collaborating agency in the order.

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